

[Name]  
[Address]

**PERMIT NO. Z-000-1-?**

**PERMIT TO ENTER (PERMANENT IMPROVEMENTS)**

Subject to the following covenants, terms, conditions and restrictions, the San Francisco Bay Area Rapid Transit District (hereinafter "District" or "BART") hereby grants permission to [Name] (hereinafter "Permittee") (collectively, the "Parties") to construct, maintain and use , (hereinafter the "Improvements") upon District property located between [?] and [?] and in the City of [?], County of [?], (hereinafter "Premises"), as shown on Exhibit "A," attached hereto and incorporated herein by reference.

1. Subject to Section 20 below, the term of this Permit shall commence on [?], 200?, and end on [?], 200?, provided, however, that at any time during the term, the Permit may be terminated by either party upon thirty (30) days prior written notice to the other party. Said notice shall be sent certified mail, return receipt requested, to:

[Name]  
[Address]  
[Attn:]

or

Right of Way Management Division  
San Francisco Bay Area Rapid Transit District  
300 Lakeside Drive, 22<sup>th</sup> Floor  
Oakland, California 94612  
Attention: Laura Giraud, Manager

The notice period shall begin to run upon receipt of said notice.

2. The fee for this Permit shall be calculated pursuant to the Fee Schedule in effect when staff time is expended, pursuant to the policy adopted by the BART Board of Directors in Resolution No. 4805. An application fee pursuant to such Fee Schedule shall be paid prior to issuance of this Permit. Fees to reimburse BART for plan review and inspection will be billed to Permittee upon completion of the Work and shall be paid to BART within thirty (30) days of the invoice date. A 10% late fee will be assessed on the balance if payment is not received within said 30 days of the invoice date. The late fee will be increased to 20% on the original balance if payment is not received within 60 days of the invoice date. BART reserves all rights to pursue all appropriate remedies to collect outstanding payments and penalties that have not been paid by Permittee within 90 days of the invoice date.

3. Permittee's right to use this area shall be non-exclusive and non-transferable, and shall be for the sole purpose of constructing, maintaining and using the Improvements. In no event shall District's property be deemed to be a public right-of-way. Overnight parking is prohibited on District's property.

4. Conditions of Use:

4.a, 4.b, 4.c, etc. (conditions specific for permitted use).

5. For BART's upcoming seismic retrofit program, BART requires a minimum 20 feet of work area around the face of each pier. If applicable, upon 60 days written notification from BART, Permittee shall be required, at its sole expense, to move the Improvements prior to BART's retrofit work. In connection with retrofit work and other construction, re-construction or maintenance work by BART, Permittee shall comply with Section 21 of the "General Terms and Conditions Relating to Utility Permits," attached hereto as Exhibit "B" and incorporated herein by reference.

6. Permittee agrees that, as an essential condition to issuance of this Permit, BART shall not assume any responsibility or liability to Permittee or any other person for damage to Permittee's facilities caused by BART, subject to the following limitation. Except for claims arising out of BART's gross negligence or willful misconduct, Permittee shall defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including any and all cost and expenses in connection therewith), incurred by reason of any act, or failure to act, of BART, its officers, agents, employees and subcontractors or any of them, in connection with Permittee's facilities. Except for claims arising out of BART's gross negligence or willful misconduct, Permittee agrees at its own cost, expense and risk to defend any and all claims, actions, suits or other legal proceedings brought or instituted

against BART, its directors, officers, agents and employees, or any of them, arising out of BART's act or failure to act in connection with Permittee's facilities, and to pay and satisfy any resulting judgments, settlements or other expenses associated therewith.

7. Conditions of this Permit shall be binding on all future owners of the Improvements. Permittee shall notify the Manager of the Right of Way Management Division of any change in ownership of the Improvements.

8. The cost of repair and any and all losses caused by Permittee's damage to any BART property or facility, or resultant loss of service, shall be at the sole expense of Permittee. Any damage to BART property or facilities shall be repaired or remedied by either Permittee or BART, at BART's discretion, and at Permittee's sole cost and expense. Permittee agrees to reimburse BART promptly for any such damage.

9. Permittee shall have the duty and agrees to exercise reasonable care to properly maintain District's property pursuant to this Permit, including, but not limited to, removing debris dumped or placed on the Premises during the term of this Permit, from any source, and to exercise reasonable care inspecting for and preventing any damage to any portion of District's property.

10. Permittee acknowledges that said Improvements constitute an encroachment upon BART's property and agrees to construct, repair, maintain and use said Improvements in accordance with and subject to the provisions of this Permit, applicable provisions of the "General Terms and Conditions Relating to Utility Permits" and all applicable state and local laws. Where there is a conflict between the provisions of this Permit and the "General Terms and Conditions Relating to Utility Permits," this Permit shall prevail.

11. Permittee agrees to notify District's Construction Liaison, Edwin Kung/John Fu at (510) 464-6445, at least 14 calendar days prior to any use of the Premises. Should Permittee require any utility hook-ups, Permittee will obtain all necessary permits and pay all fees in connection therewith. Permittee shall not engage in any activity on District property until all necessary permits, licenses and environmental clearances have been obtained.

12. Permittee shall not (a) use, generate, or store, or allow its employees, contractors or agents to use, generate, or store any Hazardous Materials on the Premises, except for those materials required to perform the Work permitted under this Permit and in compliance with all federal, state and local laws and regulations for the protection of the environment, human health and safety, as now in effect or hereafter amended (hereinafter "Environmental Laws"); or (b) release or dispose of, or allow its employees, contractors or agents to release or dispose of, any Hazardous Materials on the Premises. "Hazardous

Materials” are those materials now or hereafter (a) defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) or the Resource Conservation and Recovery Act (42 U.S.C section 6901 et seq.); (b) listed in the Hazardous Substances List, Title 8, California Code of Regulations, G.I.S.O. Section 337-339, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of the above Code; (c) characterized, regulated or subject to permitting or warning requirements as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes, or as materials for which removal, remediation or disposal is required, under any Environmental Laws; or (d) otherwise posing a present or potential hazard to human health, welfare or the environment.

13. BART shall at all times have the right to go upon and inspect the Premises and the operations conducted thereon to assure compliance with any of the requirements in this Permit. This inspection may include, but is not limited to, taking samples of substances and materials present for testing.

14. Permittee shall be responsible for and bear the entire cost of removal and disposal, in compliance with Environmental Laws, for all Hazardous Materials and non-hazardous wastes introduced to the Premises during Permittee's use and possession of the Premises. Permittee shall also be responsible for any remediation on or off the Premises necessitated by such Hazardous Materials or non-hazardous wastes. As used herein, “remediation” includes any investigation or post-cleanup monitoring that may be necessary in compliance with Environmental Laws. For purposes of disposal, Permittee shall be the generator of any such Hazardous Materials and shall provide a generator identification number on manifests for such disposal as required by Environmental Laws.

15. To the extent that any New Environmental Condition is caused by, or any Pre-existing Environmental Condition is contributed to or exacerbated by, Permittee's acts or omissions (including those of its employees, contractors and agents) during its use and possession of the Premises, Permittee shall, at BART's discretion, either (a) perform remediation of such New Environmental Condition or Pre-Existing Environmental Condition, at Permittee's cost and expense, in compliance with Environmental Laws and subject to the approval of a governmental agency with jurisdiction; or (b) indemnify BART against all costs incurred by District in performing remediation of such New Environmental Condition or Pre-Existing Environmental Condition. A “New Environmental Condition” is defined as the release or threatened release of Hazardous Materials on, about, under or emanating from the Premises as of the commencement date of this Permit. A “Pre-Existing Environmental Condition” is defined as the release or threatened release of

Hazardous Materials on, about, under or emanating from the Premises prior to the commencement date of this Permit.

16. Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith) arising from the introduction on the Premises of any Hazardous Materials or non-hazardous wastes by Permittee (including its employees, contractors and agents) or from any New Environmental Condition caused by, or any Pre-existing Environmental Condition contributed to or exacerbated by, the acts or omissions of Permittee (including those of its employees, contractors and agents) during its use and possession of the Premises.

17. Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith), caused by acts or omissions of Permittee, its employees, contractors and agents in connection with the Work done pursuant to this Permit, except to the extent such losses are caused by the gross negligence or willful misconduct of the District. Permittee agrees at their own cost, expense and risk to defend any and all actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees arising from the acts or omissions of Permittee, its employees, contractors and agents in connection with the Work done pursuant to this Permit, and to pay and satisfy any resulting judgments, settlements or other expenses associated therewith.

18. To the extent that a governmental agency with jurisdiction requires remediation of any Pre-Existing Environmental Condition that is discovered as a result of Permittee's activities pursuant to this Permit, and is not contributed to or exacerbated by the acts or omissions of Permittee, its employees, contractors or agents, Permittee shall, at BART's discretion, either (a) perform remediation of such Pre-Existing Environmental Condition, at Permittee's cost and expense, in compliance with Environmental Laws and subject to the approval of a governmental agency with jurisdiction; or (b) indemnify BART against all costs incurred by BART in performing remediation of such Pre-Existing Environmental Condition.

19. Permittee agrees that no easement, lease or other property right is acquired by Permittee through this Permit.

20. Upon any use of BART property by Permittee other than that authorized by this Permit, or upon failure of the Permittee to conform to any of the terms and conditions of this Permit, BART may terminate this Permit immediately.

21. Upon Permit expiration, Permittee shall leave the completed Improvements on the Premises, and within 30 days shall otherwise restore to its former condition all BART property which has been disturbed by Permittee, except as provided otherwise in the Permit. Restoration shall include, but not be limited to, removal of all equipment, materials, debris and the like, and repair of any damage. If Permittee fails to restore BART property as required herein, BART may perform such restoration or removal at Permittee's sole expense. If the Permit expires or is terminated prior to the completion of Improvements, BART may elect, at its sole discretion, to require Permittee to leave the Improvements on the Premises or remove them and restore the Property.

22. Insurance shall be provided by Permittee as stated in Exhibit "C" attached hereto and incorporated herein by reference. Insurance shall be approved by BART's Insurance Manager prior to any use of the Premises.

SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT

By \_\_\_\_\_  
Laura Giraud  
Manager, Right of Way Management Division

Date \_\_\_\_\_

ACCEPTED  
[PERMITTEE]

By \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT "A"**

**(copy of map or plans to be inserted here)**